

**IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE
DISTRICT OF ALABAMA, EASTERN DIVISION**

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BEATRICE L. WILLS,
Plaintiff,

vs.

SEARS ROEBUCK & CO.,
Defendant.

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DEBRA P. HACKETT, CLK
U.S. DISTRICT COURT
MIDDLE DISTRICT ALA

Civil Action No.: 3:05cv1019-SRW

**MOTION IN OPPOSITION TO DEFENDANT'S MOTION TO STRIKE
THE PLAINTIFF'S BRIEF FILED IN RESPONSE TO DEFENDANT'S
REPLY BRIEF**

T. Robin McIntyre, attorney for Beatrice Willis, request the Court grant that the Court will accept Plaintiff's Brief Filed In Response To Defendant's Reply Brief In Support of Defendant's Motion For Summary Judgment in accordance with Section 6 of the Court's Uniform Scheduling Order. Clearly Plaintiff's Brief Filed In Response To Defendant's Reply Brief In Support of Defendant's Motion For Summary Judgment is a response by the Plaintiff to a motion filed by Sears, and to comply with Section 6 of the Court's Uniform Scheduling Order the Plaintiff must file a response when the Plaintiff is in opposition to the motion filed by Sears.

In support of Plaintiff's motion, Plaintiff states the following:

The Court should note that Sears filed a brief entitled, Defendant's Reply Brief In Support of Its Motion For Summary Judgment, and at the same time filed a motion entitled, Defendant's Motion to Strike. These two filings are companion filings and are enter related. The Defendant's Motion to Strike requested the Court strike portions of the documents submitted by the Plaintiff in support of Plaintiff's Response and Brief in Opposition to Defendant's Motion for Summary Judgment. A review of the Uniform Scheduling Order of March 14, 2006, indicates based on Section 6 of that Order that "The failure to file a response to any motion – either dispositive or non-dispositive... shall indicate that there is no opposition to the motion." To fully comply with Section 6 of the Court's Order the Plaintiff filed Plaintiff's Brief In Response To Defendant's Reply Brief In Support of Its Motion For Summary Judgment, because the Plaintiff strongly opposes what is stated in Defendant's Reply Brief In Support of Its Motion For Summary Judgment and its companion filing, Defendant's Motion to Strike.

It appears to the Plaintiff that Sears is in some ways trying to mislead the Court by its filing of Defendant's Motion to Strike The Plaintiff's Brief Filed In Response To Defendant's Reply Brief. Sears has intentionally left out of the title of its motion "In Support of Its Motion For Summary Judgment." Sears' Reply Brief is part of its Motion For Summary Judgment. Section 6 of the Court's Uniform Scheduling Order requires a response from the Plaintiff to any motion filed by Sears if the Plaintiff has opposition to any motion. Sears also tries to mislead the Court by making no reference in its Motion To Strike The Plaintiff's Brief Filed In Response To Defendant's Reply Brief to the inter relationships of the two companion filings which it filed at the same time, nor does Sears make any reference to Section 6 of the Order. Sears instead states in its motion, "The Order does not allow for the non-moving party to respond to the moving party's reply," but a review of the Order of March 14, 2006, indicates that no where in the Order is it stated that the non-moving party is not allowed to respond to the moving party's reply in support of a motion it has filed. Sears has over stated and misstated what is in the Order of March 14, 2006.

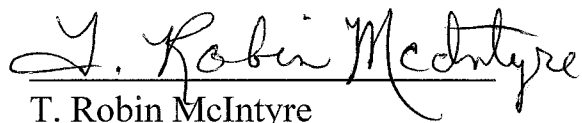
The Plaintiff has no objection to Sears filing a response to Plaintiff's response to Defendant's reply brief "In Support of Its Motion For Summary Judgment."



T. Robin McIntyre
Attorney for Plaintiff
2101 Executive Park Dr.
Opelika, AL 36801
(334) 745-3223

CERTIFICATE OF SERVICE

I do hereby certify that I have on this 2 day of March, 2007, by U.S. Mail sent a copy of the above to:
Hon. Mac B. Greaves
Burr & Forman LLP
3100 South Trust Tower
420 North 20th Street
Birmingham, AL 35203



T. Robin McIntyre